

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PEGGY NOLAN, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

ORDER
13-CV-333-A

OLEAN GENERAL HOSPITAL, UPPER
ALLEGHENY HEALTH SYSTEM, INC.,
ELI LILLY AND COMPANY, NOVO NORDISK,
INC., NOVO NORDISK PHARMACEUTICAL
INDUSTRIES, INC., and SANOFI-AVENTIS
U.S., LLC.,

Defendants.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1)(B). On June 19, 2013, Magistrate Judge McCarthy filed a Report and Recommendation that recommends the motion of plaintiff Peggy Nolan to remand the action to State of New York, Supreme Court, County of Cattaraugus, be granted, and that her alternative request for severance and partial remand be denied.

No objections to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(2), and L. R. Civ. P. 72(b) have been filed. The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties.

The Court agrees with the recommendation of the Magistrate Judge that remand should be ordered. As stated in the Report and Recommendation, dismissal of the non-diverse defendants pursuant to Fed. R. Civ. P. 21 to establish complete diversity of

citizenship would result in duplicative, wasteful litigation in federal and state courts that could result in conflicting rulings.

The Court declines to adopt the Magistrate Judge's reasoning questioning the power of the Court to preserve diversity of citizenship jurisdiction under 28 U.S.C. § 1332 by dropping non-diverse defendants who are not required to be joined. The Court notes, without ruling, that dismissal of such non-diverse defendants pursuant to Fed. R. Civ. P. 21 may properly relate back to the filing of the complaint under Fed. R. Civ. P. 15(c) and cure the defect in subject matter jurisdiction as of the time of filing of the complaint. *E.R. Squibb & Sons, Inc., v. Accident & Cas. Ins. Co.*, 241 F.3d 154, 163 (2d Cir. 2001). For the foregoing reasons, it is

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), the Magistrate Judge's recommendations that plaintiff Nolan's motion to remand the action to New York State Supreme Court, County of Cattaraugus, be granted, and recommending that plaintiff's alternative motion for severance and partial remand be denied, are adopted.

The Clerk of Court shall take all steps necessary to remand the action pursuant to 28 U.S.C. § 1447(c) to New York State Supreme Court, County of Cattaraugus. The Clerk shall mail a certified copy of this Order to the clerk of the state court.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: July 10, 2013